



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1997

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR97-2415

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109763.

The Texas Department of Transportation (the "department") received a request for "all written materials, documents, correspondence and records relative and specific to the investigation of Mr. David Romo and Ms. Barbara Stocklin, identified as Case No. 97H-M-C418." You state that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your argument and reviewed the information submitted.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this

burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

We note that you have submitted a Notice of Charge of Discrimination against the department from the Equal Employment Opportunity Commission (the "EEOC"). This office has ruled that a pending complaint before the EEOC indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. The pending EEOC complaint against the department demonstrates that the department reasonably anticipates litigation relating to the complaint. We also conclude that the requested information relates to this reasonably anticipated litigation. Accordingly, the department may withhold the requested information from public disclosure under section 552.103(a).

However, once all parties to litigation have gained access to the information at issue under section 552.103(a), through discovery or otherwise, section 552.103(a) is no longer applicable to that information. Open Records Decision Nos. 551 (1990), 454 (1986). In particular, we note that the requestor, Mr. Romo, has seen a considerable amount of the information you submitted to this office. The information already seen by Mr. Romo may not be withheld from disclosure. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

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¹We note, however, that to the extent some of the requested information relates to sexual harassment, it may be protected under common-law privacy even after the litigation has concluded. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

Ref: ID# 109763

Enclosures: Submitted documents

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